

CONDITIONAL PETITION FOR EXTENSION OF TIME

If entry and consideration of the amendments above requires an extension of time, Applicants respectfully request that this be considered a petition therefor. The Assistant Commissioner is authorized to charge any fee(s) due in this connection to Deposit Account No. 14-1263.

ADDITIONAL FEE

Please charge any insufficiency of fees, or credit any excess, to Deposit Account No. 14-1263.

REMARKS

Applicants respectfully request reconsideration and allowance of this application in view of the following comments.

In the Office Action dated June 22, 1999, claims 2-12 were rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 12-33 of then co-pending application Serial No. 08/788,147, which is now U.S. Patent No. 5,968,483. In response, Applicants respectfully request that this issue be held in abeyance until allowable subject matter is indicated, at which time Applicants either will prove patentable distinctness or file a suitable terminal disclaimer.

Claims 7-12 were also rejected under 35 U.S. C § 103(a) as being obvious over JP Hei-04/178,316 in view of Applicants' own admission on page 2, last paragraph, and page 4, last

paragraph. In response, Applicants respectfully request that the Examiner reconsider and withdraw this rejection.

In the first paragraph on page 2 of the Office Action dated June 22, 1999, and then, again, during the discussion of the obviousness rejection, the Examiner points out that “the [present] claims are drawn to a *subgenus* of the invention allowed in the parent case.” Since the parent case claims were allowed and issued over JP Hei-04/178,316 in spite of Applicants’ admissions, and the instant claims are a subgenus, and, therefore, *included within* the allowed and issued parent case claims, it follows that the instant claims must be nonobvious over JP Hei-04/178,316 *as a matter of law*. If everything in the parent was properly allowed over JP Hei-04/178,316, then the tiny, included portion now claimed is also allowable.

The force of this position is even stronger in view of the fact that the Examiner on the instant case is the same Examiner who issued the parent patent. Moreover, the Office Action issued June 22, 1999, was being issued shortly after the parent application was being allowed on January 22, 1999.

In short for the sake of consistency alone, the Examiner should reconsider and withdraw this rejection. An early notice that this rejection has been reconsidered and withdrawn is earnestly solicited.

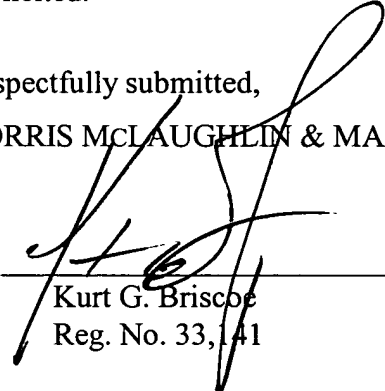
Applicants believe that the foregoing constitutes a bona fide response to all outstanding objections and rejections.

Applicants also believe that this application is in condition for immediate allowance. However, should any issue(s) of a minor nature remain, the Examiner is respectfully requested to telephone the undersigned at telephone number (212) 808-0700 so that the issue(s) might be promptly resolved.

Early and favorable action is earnestly solicited.

Respectfully submitted,  
NORRIS McLAUGHLIN & MARCUS, P.A.

By

  
Kurt G. Briscoe  
Reg. No. 33,141

220 East 42<sup>nd</sup> Street  
30<sup>th</sup> Floor  
New York, New York 10017  
Tel.: (212) 808-0700  
Fax.: (212) 808-0844

CERTIFICATE OF EXPRESS MAILING

I hereby certify that the foregoing Preliminary Amendment is being deposited with the United States Postal Service Express Mail, Next Day Service in an envelope addressed to: Hon. Commissioner of Patents, Washington, D.C. 20231, on the date indicated below:

Date: 10/21/02

By

  
Jennifer M. Archer